Before the
Federal Communications Commission
Washington, DC 20554

JAN 2 5 2002

In the Matter of   )
)
Request for Waiver by   )
)
Cotton Center ISD   )   NEC.470.01-13-99.03100030
Cotton Center, Texas   )
)
Federal-State Joint Board on   )   CC Docket No. 96-45
Universal Service   )
)
Changes to the Board of Directors of the   )   CC Docket No. 97-21
National Exchange Carrier Association, Inc.   )

ORDER

Adopted: January 11, 2002   **Released: January 14, 2002**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Waiver Request filed by Cotton Center ISD (Cotton Center), Cotton Center, Texas.[1] Cotton Center seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.[2] For the reasons set forth below, we deny Cotton Center's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.[3] In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.[3] The Administrator must post the FCC Form

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[1] Letter from Keith E. Gast, Cotton Center ISD, to Federal Communications Commission, filed June 13, 2000 (Waiver Request).

[2] *Id.*

[3] 47 C.F.R. §§ 54.502, 54.503.

[4] 47 C.F.R. § 54.504(b)(1), (b)(3).

470 on its website, and the applicant is required to wait 28 days before making a commitment with a selected service provider.[5] Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.[6] The Commission's rules allow the Administrator to implement an internal filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.[7] Applications that are received outside this filing window are subject to separate funding priorities under the Commission's rules.[8] It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Cotton Center requests a waiver of the Funding Year 3 application window, which closed on January 19, 2000 at 11:59 p.m. Eastern Standard Time.[9] Because the window closed on that date, in order to be in compliance with the program's competitive bidding requirements and also file an application within the filing window, it was incumbent upon applicants in Funding Year 3 to have their FCC Forms 470 posted by December 21, 1999, which was 28 days before the filing window closed.[10] Cotton Center provides a receipt for certified mail demonstrating that it mailed its FCC Form 470 on December 10, 1999.[11] The record reflects that SLD received the FCC Form 470 on December 27, 1999, and posted it on January 3, 2000.[12] As a result, Cotton Center's allowable contract date was January 31, 2000, after the filing window for FCC Forms 471 had closed.

4. We conclude that Cotton Center has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.[13] In requesting funds from the schools and libraries universal service support mechanism, the applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.

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[5] 47 C.F.R. § 54.504(b)(3), (4); § 54.511.

[6] 47 C.F.R. § 54.504(c).

[7] 47 C.F.R. § 54.507(c).

[8] 47 C.F.R. § 54.507(g).

[9] Waiver Request; SLD web site, What's New (December 6, 1999) <http://www.sl.universalservice.org/whatsnew/121999.asp>.

[10] 47 C.F.R. § 54.504(b)(3), (4); § 54.511.

[11] Waiver Request, Attachment.

[12] *Id.*; FCC Form 470, Cotton Center ISD, posted January 3, 2000. The fact that SLD did not post the form until seven days after receiving it is irrelevant in this instance. Because SLD did not receive the form until December 27, more prompt posting by SLD would not have accorded Cotton Center an allowable contract date within the filing window.

[13] *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

5.   The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. It is incumbent upon applicants to anticipate unexpected yet reasonably foreseeable circumstances, such as postal delay.[14] In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.[15] Thus, in order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. Here, Cotton Center fails to present good cause as to why it could not timely file its application. We therefore find no basis for waiving the filing window deadline.

6.   ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Cotton Center ISD, Cotton Center, Texas, on June 13, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

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[14] *See FCC Overrules Caldwell Television,* 58 RR 2d 1706, 1707 (1985). In a recent order, the Commission granted a waiver of the FCC Form 471 filing window for certain applicants in the first three program funding years that mailed their applications at least three days before the filing deadline, or the day before via guaranteed overnight courier. *See Request for Review by Hardee County School Board et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.,* CC Docket Nos. 96-45 and 97-21, Order, DA 01-2978 (Com. Car. Bur. rel. December 21, 2001) *(Hardee County).* However, unlike applicants granted relief in that order, Cotton Center experienced delay with respect to its FCC Form 470, and therefore does not merit similar relief from postal delays. The FCC Form 470 merely initiates the process of requesting bids, and unlike the FCC Form 471 application, is not subject to a specified filing period and firm deadline. Moreover, the Commission based its decision in *Hardee County* in large measure upon the fact that, beginning in Funding Year 4, FCC Forms 471 are deemed filed when postmarked. By contrast, FCC Forms 470 continue to be considered filed when received by SLD. Therefore, the special circumstances justifying the Commission's decision in *Hardee County* are not present in the case of the instant Waiver Request by Cotton Center.

[15] *See Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association,* File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000) para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").